IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1079 of 1987
with
CIVIL APPLICATION No.__ of 2000 (for delay)
and
CIVIL APPLICATION No.12109 of 2001
(for bringing heirs on record)

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARSURAM GOVIND MULE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1079 of 1987
MR RR MARSHALL for Petitioner No. 1
MR SP SEN, A.G.P. for Respondents No. 1-2
MR SUNIL K SHAH for Respondent No. 3
RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/01/2002

ORAL JUDGEMENT

1. Shri Parsuram Govind Mule, original petitioner, filed main writ petition i.e. Special Civil Application No.1079 of 1987 and prayed that impugned order at Annexure : F dated 14.7.1986 passed by the respondent No.2 be quashed and set aside and he may be granted relief of pension, gratuity and other benefits as per the Government Resolution at Annexures : G, H & I.

2. Initially on 8.10.1987 the learned Single Judge of this Court issued notice making it returnable on 12.11.1987 and on 26.12.1991 another learned Single Judge of this Court simply admitted the matter by issuing "Rule". In response to the notice issued earlier on the main petition reply Affidavit was filed by the respondents opposing the petition and grant of interim relief. It is contended in the reply by the respondent that the petitioner retired on 21.8.1971 as work-charge employee therefore he was neither in temporary establishment nor permanent establishment. Therefore, he was not entitled to get pension or gratuity.

3. During the pendency and final disposal of this petition the sole petitioner died on 24.7.1993. On this ground the above Civil Application lNo.12109 of 2001 came to be filed by the applicant Shri Parshuram Govind Mule, Sole legal heir of original petitioner Pramod Parshuram Mule. The said Civil came to be filed in 2001 along with the application for condonation of delay i.e. Civil Application No.___ of 2001. Thus, the delay of about 7 years in filing Application for bringing legal heirs on record was filed and the gross delay of 7 years sought to be condoned on the ground ..."The delay has occasioned because the original heir had approached the advocate of the petitioner and an application for bringing heir on record was also prepared and affidavit has also been sworn in the same. However, it seems either by oversight the same was not filed or when it was filed it has been misplaced in the office of the High Court and as a result when the applicant contacted his advocate again and again the papers were searched in the office of the High Court and were not traceable in the High Court and hence this application is filed. It is in this set of circumstances the delay has occasioned in bringing heir on record."

4. With the death of sole petitioner Shri Parshuram Govind Mule in 1993 the petition stood abated and for setting aside the abatement the legal heirs were required to be brought on record at the earliest. The short

question involved in this case is as to whether after a period of 7 years legal heir of the deceased original petitioner can be allowed to be brought on record by condoning the delay. Learned Counsel Shri Marshal for the legal heir of the original petitioner deceased Parshuram Mule submitted that though the application for bringing heir on record was prepared and Affidavit was also sworn, but through oversight the same could not be filed as it was misplaced in the office of the High Court. He submitted that the applicant contacted his Advocate again then the papers were searched in the office and when it was traceable in the office of the High Court therefore the present application came to be filed in 2001 for bringing legal heir on record. He, therefore, submitted that the delay has been sufficiently explained and therefore the same should be condoned and the Civil Application for bringing legal heir of deceased original petitioner be granted and the main petition be heard on merit and decided.

5. There is no period of limitation for bringing legal heir on record in writ petition but that does not mean that the party can file petition after long long period. 7 years delay is most unreasonable and such a gross delay ordinarily cannot be condoned that too on the ground stated in the Application. Except vague averments no details have been given in the Application for condonation of delay. It is very easy to say that through oversight the application was not filed. That was not the only ground on which the delay is sought to be condoned. As stated above in Para : 1 of the application for condonation of delay it is stated that either through oversight the application could not be filed or it was filed then it was misplaced in the office of the High Court. Thus, it is clear that the applicant himself is not sure as to whether the application was filed or not and if it was filed then it was misplaced in the office of the High Court. When it was misplaced nothing has been stated. This type of lame excuse cannot be accepted for condoning the delay. These are the discretionary powers and therefore in such type of cases such discretionary powers cannot be exercised in favour of those persons who are sleeping over their rights for years together.

6. In view of above discussion I am not inclined to grant Civil Application for condonation of delay in filing Civil Application No.12109 of 2001 for bringing legal heir of the sole original deceased petitioner on record. Accordingly the same is rejected. Once the said Civil Application for condonation of delay is rejected

then Civil Application No.12109 of 2001 for bringing legal heir on record has to be rejected and accordingly it is rejected.

7. When this Court has not granted application for bringing legal heir of deceased petitioner on record then the main writ petition No.1079 of 1987 has to be dismissed as abated on the death of the sole petitioner. Accordingly all these matters are dismissed with no order as to costs. Rule discharged.

sd/-

Date : January 11, 2002 (B.J.Shethna, J.)

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